



**Before:** Judge Vinod Boolell  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

SELIM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for the Applicant:**  
Yassin Tag Eldin

**Counsel for the Respondent:**  
Steven Dietrich, ALS/OHRM  
Nicole Wynn, ALS/OHRM

## **Introduction**

1. The Applicant is a Logistics Assistant at the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). On 30 March 2016, he filed an Application seeking to suspend implementation of the decision not to renew his appointment beyond 31 December 2015 (contested decision).
2. The Respondent filed a Reply to the Application on 1 April 2016.

## **Facts**

3. On 30 November 2015 and 1 December 2015, the Applicant requested management evaluation of the contested decision.
4. On 20 January 2016, the Applicant received a management evaluation letter from the Under-Secretary-General, Department of Management, upholding the contested decision.
5. The letter explained that the post encumbered by the Applicant had been abolished in the 2014-2015 budget cycle. Further, in approving the MONUSCO budget for 2014-2015 (A/68/788), the General Assembly had decided to convert three FS-level Logistics Assistant posts in the Mission Support Centre to national General Service posts.

## **Applicant's submissions**

6. The Applicant submits that he is 60 years old and that he can still work for another two years and he refuses to be separated at the age of 60.

## **Respondent's submissions**

7. The Respondent submits that the Application is not receivable *rationae materiae* because the Dispute Tribunal lacks jurisdiction under art. 2.2 of the Dispute Tribunal's Statute since the Applicant has requested and has already received management evaluation of the contested decision. Article 2.2 of the Dispute Tribunal's Statute states:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

## CONSIDERATIONS

8. A suspension of action is receivable if management evaluation is still pending. Equally, if the Tribunal grants a suspension of action such a judicial order would lapse when the Management Evaluation Unit (MEU) hands out its decision, a clear case of a situation where an executive body has the power over a judicial body. The Interim Independent Assessment Panel (IIAP) appointed by the General Assembly<sup>1</sup> to conduct an assessment of the system of administration of justice in the United Nations made this observation on suspension of action orders lapsing as a result of the decision of the MEU at paragraphs 357 and 358.

357. Interlocutory orders were not appealable under the original Statute. In a recent amendment of the Statute by the General Assembly, these orders have been made appealable, and filing of an appeal would have the effect of suspending execution of the interim order. This would effectively make the power of the court to issue temporary relief redundant. This applies also to the power of the Tribunal to order suspension of action under the contested administrative decision pending completion of management evaluation and delivery of response letter to the staff member by the MEU. Under Article 2.2 of the UNDT Statute and Article 13 of the Rules of Procedure, a staff member can apply for suspension of action. The Tribunal has to issue an order on such application within five working days of the service of the application on the respondent. If the application is granted, the implementation of the decision is suspended until the evaluation is completed and the applicant receives the response. One of the concerns expressed with respect to the provision of Article 2.2 is that **the automatic vacation of an order of the UNDT for suspension of action on completion of the management evaluation allows an executive evaluation to override a judicial order**. With the amendment allowing appeal of interim orders, and an automatic suspension of

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<sup>1</sup> See General Assembly resolutions 68/254 and 69/203.

any interim order of the Tribunal on filing of an appeal, the power of the Tribunals in this respect becomes ineffectual (emphasis added).

358. The Panel concludes that while the Tribunals can order remedies and interim relief under their respective statutes, the remedies within the scope of their jurisdiction are limited and in some instances, as pointed out above, inadequate and not fully effective. The Panel believes that the authority of the court to order suspension of action should be truly effective and any statutory or functional impediments in this regard need to be removed.

9. Whatever approach is taken by the General Assembly in regard to the observations of the IIAP, the blunt fact remains that the Application would not be receivable as management evaluation is complete. But even if the Application was receivable the Applicant would still fail for the following reasons.

10. In resolution 62/228 (Administration of justice at the United Nations), the General Assembly,

50. *Emphasize*[d] the need to have in place a process for management evaluation that is efficient, effective and impartial;

51. *Reaffirm*[ed] the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted...

11. In other words the purpose of management evaluation is to give an opportunity to the Administration to review an administrative decision and take any remedial or corrective action. The philosophy behind this is no doubt to limit litigation to a minimum and ensure a healthy work environment in the Organization. In order to enable MEU to fulfill its mandate, the administrative decision must clearly be identified..

12. It is equally obvious and logical that an individual seeking injunctive relief by way of a suspension of action must clearly identify the administrative decision. In his Application what the Applicant is asking the Tribunal to suspend is the response of the MEU by averring that the request is an “Appeal against: Evaluation Letter - Case of Mr. Mohamed Selim (MEU/616-15/R) [DK].”

13. The way the Applicant has framed his request may well be interpreted to mean that he is contesting the administrative decision to separate him and this is

what he labeled evaluation of the MEU. The Tribunal is not however to read more in the Application request than what it says.

**Decision**

14. The Application is rejected.

*(Signed)*

Judge Vinod Boolell

Dated this 5<sup>th</sup> day of April 2016

Entered in the Register on this 5<sup>th</sup> day of April 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi